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December 14, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 1, 2007

Case Number: TSO-0524

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's request for an access authorization should be granted. For the reasons detailed below, it is my decision that the Individual's request for an access authorization should not be granted.

**I. BACKGROUND**

The Individual has been employed at a DOE facility in a position that requires him to hold an access authorization. The Individual applied for an access authorization, also referred to as a security clearance, and completed a Questionnaire for National Security Positions (QNSP) in February 2004. DOE Ex. 7. The Individual disclosed that in the early 1980s he was arrested, charged with Driving While Intoxicated (DWI), and ordered to attend "DWI school." *Id.* In a separate incident, he was fined for "open container" in 1998. *Id.* He was also arrested for a domestic dispute during his divorce proceedings after fighting with his wife in a bar. *Id.*

Based on his disclosure of these and other arrests, the Individual was asked to participate in a Personnel Security Interview (PSI) in February 2006 and again in June 2006. DOE Exs. 5 and 6. The Individual discussed his DWI arrest in greater detail and spoke about his general alcohol consumption. *Id.* He stated that he continues to consume alcohol. He added that he was arrested for disorderly conduct in 1979 and admitted that he had consumed alcohol prior to the incident. *Id.* During the PSIs, the Individual also related a history of extensive alcohol consumption, particularly following a divorce in 1998. *Id.* The Individual further disclosed that he was sent home from his job on one occasion in 1998 after his supervisors found him to be intoxicated while at work. *Id.*

The local security office (LSO) determined that the PSIs did not resolve the security concerns and referred the Individual to a DOE consultant-psychiatrist ("the Psychiatrist") for an evaluation. In a January 2007 report, the Psychiatrist "diagnosed [the Individual's] clinically significant problems with alcohol as an 'Alcohol Related Disorder, Not Otherwise Specified,'"

pursuant to the criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th Edition, Text Revision (DSM-IV-TR). DOE Ex. 3. In reaching this diagnosis, the Psychiatrist cited the Individual's history of alcohol consumption, particularly his DWI arrest, his period of heavy drinking following his divorce (during which the Individual admitted he "nearly drank himself to death"), and the Individual's self-admitted "binge drinking." *Id.*

The Psychiatrist further stated that the Individual's disorder was in "early remission" on account of the Individual's maintaining several months' abstinence between the June 2006 PSI and the January 2007 psychiatric evaluation. *Id.* However, the Psychiatrist determined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. In order to make this showing, the Psychiatrist recommended that the Individual be abstinent from alcohol for a period of one year and undergo "outpatient treatment of moderate intensity." *Id.*

In July 2007, the DOE notified the Individual that his alcohol use and the Psychiatrist's diagnosis of an alcohol disorder raised security concerns under 10 C.F.R. § 710.8(j) (Criterion J, alcohol use). Notification Letter, July 24, 2007. The Individual requested a hearing in this matter. The Acting Director of the Office of Hearings and Appeals (OHA) appointed me to serve as the Hearing Officer.

A hearing was held in this matter. Both the Individual and the DOE counsel submitted documents. At the hearing, the Individual presented his own testimony as well as the testimony of his wife, his brother, and a former co-worker, to support his position that he is rehabilitated from his alcohol problem. The DOE counsel presented the testimony of the Psychiatrist.

## **II. THE HEARING**

### **A. The Individual**

The Individual felt that some of his prior statements regarding his alcohol history were misconstrued. Tr. at 45, 46. For example, when he drank after his divorce, "[the Individual] didn't see that as a crutch." *Id.* Following the divorce, "a six pack" is the most beer he drank at one time (the Individual stated that he has "a very low tolerance," of two to five beers). Tr. at 53, 62, 80. He also stated, however, that he drank "constant[ly]" for three months, "give or take a few," following his fall 1998 divorce. Tr. at 49, 73, 75. Also, the Individual explained that when he told the Psychiatrist that he was a "binge drinker," he was using that term to refer to the lengthy periods between his moderate drinking episodes, not the alcohol volume consumed at one time. He stated, "I [would] go for a long time without drinking, and then I would drink." Tr. at 60-61, 65. He stated that his prior statement that he "nearly drank himself to death" following his divorce in 1998 was an exaggeration, but admitted that he "drank a lot." Tr. at 70.

The Individual testified that he has had various alcohol-related problems over an extended period, including the DWI arrest in the early 1980s. Tr. at 60. The Individual stated that he drank heavily from 1999 – 2001. Tr. at 66-67. He also stated that on occasion he would drink "a beer maybe" to alleviate a hangover. Tr. at 68. The Individual previously admitted that he was sent home from his prison job because he was intoxicated. At the hearing, he explained that he

worked the “graveyard shift” and stated, “I wasn’t drunk [at work]. I drank earlier that day.” Tr. at 76. Specifically, he drank a six-pack earlier in the day, he was at work several hours and a co-worker thought he smelled of alcohol. *Id.* The medics at his job performed a breath alcohol test which showed a high breath alcohol content. *Id.* The Individual also admitted to driving while intoxicated as recently as four years ago. Tr. at 82. Finally, the Individual stated that when he drank “maybe” six beers he would require at least forty-eight hours recovery time. Tr. at 61-63, 66-67.

The Individual currently drinks beer. Tr. at 88-89. He resumed drinking after a seven-month period of abstinence, from the June 2006 PSI until the January 2007 psychiatric evaluation. Tr. at 89. The Individual stated that he changed his post-divorce drinking pattern because he feared for his health. Tr. at 49. He no longer socializes with two former friends with whom he drank heavily. Tr. at 51, 52. He added that he has not been intoxicated in at least four years. Tr. at 80. When he does drink, he now only drinks a single beer. Tr. at 78. The Individual acknowledged that his heavy drinking was “a problem.” Tr. at 85.

Finally, the Individual stated that he did not disagree with the Psychiatrist’s analysis, but then stated that he disagreed with the diagnosis, stating, “I don’t have an alcohol disorder.” Tr. at 45, 55. He stated, “I don’t feel I need treatment.” Tr. at 57. He also said, “I’m not into drinking.” Tr. at 52, 57. Beer, he insisted, “[D]oesn’t really get [him] drunk.” Tr. at 54. He added, “I’m conscious about [the problem caused by his alcohol consumption], and I’m able to quit if it’s a problem . . . I don’t drink that much anymore. I’m down to almost nothing. And I don’t crave liquor. I don’t think about it. I don’t think about getting drunk.” Tr. at 89.

## **B. The Individual’s Wife**

The Individual and his wife have been married for a little over a year, and dated for approximately one year prior to their marriage. Tr. at 12. The Individual’s wife testified that she has known the Individual since they were in high school and has never known him to be a drinker. *Id.* She added that she and the Individual do not go out much because they work different shifts; she works nights and he works during the day. Tr. at 15. She stated that the Individual “very seldom drinks,” perhaps only “a beer . . . once a month, or two times a month. . . .” Tr. at 13. She “[does not] see a[n alcohol] problem” with the Individual and has not seen the Individual intoxicated. Tr. at 14. The Individual’s wife stated that the Individual does not deal with stressful situations by drinking alcohol. Tr. at 19. Finally, she testified that the Individual has never verbalized to her that he decided to stop drinking alcohol altogether. Tr. at 16.

## **C. The Individual’s Brother**

The Individual’s brother has seen the Individual regularly on weekends for the past two years. Tr. at 27. Before that, he saw him “[a]lmost every day.” Tr. at 28. The Individual and his brother have always been close. Tr. at 22.

According to his brother, the Individual does not drink heavily, as he did during his divorce. Tr. at 24. In fact, the Individual now drinks “very little” on occasions such as “birthdays or [on]

Christmas.” Tr. at 25. The Individual’s brother stated that he never felt that the Individual had a drinking problem. Tr. at 28. He added, “[the Individual] never got in trouble.” Tr. at 29. The Individual’s brother stated that he has never seen the Individual intoxicated, just “a little tipsy.” Tr. at 24. The Individual’s brother also stated that he did not believe the Individual would return to drinking in response to a stressful situation or problem. Tr. at 26. He added that the Individual’s new marriage has “changed him a lot” and the Individual seems much happier. *Id.*

#### **D. The Individual’s Former Co-Worker**

The Individual and his former co-worker have known each other since the mid-1980s. Tr. at 35. The former co-worker and the Individual work for the same company, although they no longer work together. Tr. at 35. They still see each other approximately two or three times a week. Tr. at 40-41.

The Individual and the former co-worker have socialized outside of work and consumed beer together in the past. Tr. at 41. The former co-worker has never seen the Individual intoxicated and the two never discussed the Individual’s past alcohol use. Tr. at 42. Finally, the former co-worker stated that he never thought the Individual had an alcohol problem or used alcohol excessively. *Id.*

#### **E. The Psychiatrist**

The Psychiatrist testified that the Individual exhibited symptoms of alcohol dependence following the Individual’s divorce in Fall 1998. Tr. at 92. During other periods, the Individual exhibited symptoms of alcohol abuse. *Id.* For example, the Individual met the criteria for a diagnosis of alcohol abuse during his DWI and open container arrests, when he was sent home from work after being found intoxicated at work, and when fighting with his first wife at a bar. *Id.* The Psychiatrist stated that the Individual did not currently meet the criteria for a diagnosis of alcohol abuse or dependence. However, he stated that the Individual had “clinically significant problems with alcohol.” Tr. at 93. Therefore, the Psychiatrist diagnosed the Individual with an “alcohol disorder not otherwise specified.” Tr. at 94. This disorder “affect[s] the Individual’s] judgment and reliability. . . .” Tr. at 98. The Psychiatrist stated that he did not hear testimony at the hearing which caused him to change his diagnosis.\*

The Psychiatrist regarded the Individual’s healthy marriage and reduction in alcohol consumption as positive developments. Tr. at 105, 110. However, the Psychiatrist felt that the Individual “recounted his [alcohol] history with a lot of minimizing and a lot of denial. . . .” Tr. at 108. The Individual pointed out the “ameliorating circumstances,” the “distance in time that it occurred,” or the “facts . . . that were in his favor.” Tr. at 108-109. The Individual never said “I screwed up.” Tr. at 109. In short, the Psychiatrist felt “that [the] Individual was not taking responsibility for his part in those [troubles he has had] in abusing alcohol.” *Id.*

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\* The Psychiatrist stated in his January 2007 report that the Individual’s alcohol problem was in “early remission” because, at that time, the Individual had maintained less than one year of abstinence from alcohol. Tr. at 94. The Psychiatrist maintained that diagnosis even though the Individual resumed drinking. Tr. at 96.

The Psychiatrist added that the “main problem” was that despite the fact that the Individual’s access authorization was in jeopardy, the Individual continued to drink as of the date of the hearing. Tr. at 96. In fact, the Psychiatrist stated that the Individual’s resumption of drinking alcohol indicated a worse prognosis as of the date of the hearing than during the psychiatric evaluation because he exhibited “more denial” about his drinking. Tr. at 99. According to the Psychiatrist, the Individual continued to drink because, “[I]t’s too hard for a person with an alcohol disorder to give up drinking.” Tr. at 101. The Psychiatrist believed “there is a high risk” that the Individual will succumb in the future to stressful, relapse-inducing events, “which have been pretty disastrous for him. . . .” Tr. at 98. The Psychiatrist defined a relapse as a single drink. Tr. at 111. The fact that the Individual continues to drink despite the problems his drinking has caused regarding his job, particularly his ability to secure an access authorization, causes the Psychiatrist to believe that the Individual’s problem is “a little worse” than at the time of the psychiatric evaluation. Tr. at 98.

The Psychiatrist testified that “the safest route” for the Individual is to completely abstain from alcohol for at least one year. After that period, the Individual may debatably resume social drinking without undue risk. Tr. at 97. Further, entering a voluntary outpatient treatment program would double the Individual’s chances of recovery. Tr. at 111. Therefore, the psychiatrist recommended that the Individual enter a treatment program “to show adequate evidence of rehabilitation . . . .” Tr. at 113.

### **III. STANDARD OF REVIEW**

The regulations governing the Individual’s eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” An individual is eligible for access authorization if such authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would

not endanger the common defense and security and would be clearly consistent with the national interest.” Id. § 710.27(a).

#### IV. ANALYSIS

The derogatory information concerning Criterion J centers on the Individual’s alcohol use. Criterion J concerns conduct indicating that the Individual has “been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Given the Individual’s well-documented problem with alcohol and the Psychiatrist’s diagnosis that the Individual suffered from an alcohol disorder, the LSO had sufficient grounds to invoke Criterion J. Thus, the only issue to be resolved is whether these security concerns have been adequately mitigated.

Based on the record in this case, I am unable to conclude that the Individual has mitigated the security concerns regarding his alcohol use. The Individual’s principal argument during the hearing was that he has reduced his alcohol consumption over the past several years. The evidence on this point, however, is fairly thin. The Individual maintained that he does not currently drink much alcohol and that he has never had an alcohol problem. While I believe the Individual testified candidly regarding his current alcohol consumption, I am concerned about his apparent minimization of his past problems with alcohol in various statements to DOE (the PSIs, the psychiatric evaluation, and the hearing), his lack of insight into his problem with alcohol, and his failure to seek counseling or education about managing an alcohol-related problem.

Furthermore, the Individual did not bring forth witness testimony sufficient to corroborate his assertion that he has resolved his alcohol problem. I believed the Individual’s witnesses, who have known him for many years, testified truthfully when they stated that they personally did not believe the Individual had a problem with alcohol. However, I did not find the Individual’s witnesses particularly well-informed regarding the Individual’s history of alcohol-related problems and his present habits.

Only his brother had frequent interaction with him during the Individual’s heaviest periods of alcohol consumption. His brother maintained that the Individual drinks significantly less now than in the past; however, the brother also stated that the Individual “never got into trouble” despite the Individual’s past DWI arrest and other alcohol-related incidents. This leads me to believe that the Individual’s brother does not have extensive knowledge of the Individual’s alcohol history. The Individual’s wife, although she has known him since high school, did not interact frequently with the Individual until approximately two years ago when they first began dating. I believed her testimony that the Individual does not drink much alcohol around her. However, because they work different shifts, the Individual and his wife do not spend much time together during the week. Therefore, it is entirely possible that the Individual drinks without his wife’s knowledge. The Individual’s former co-worker stated that he and the Individual typically do not socialize together.

The Individual presented no other witnesses with whom he socializes that could establish how he spends his free time during the week. Taken together, the witness testimony indicates positive changes in the Individual's behavior, but is insufficient to adequately corroborate the Individual's position that he has consumed alcohol in moderation with no problem for the past several years.

In addition to the shortage of corroborating testimony, the Individual has not undergone any alcohol-related treatment, counseling or education. This causes me to have less confidence that the Individual will be able to avoid drinking to excess in the future. The lack of any significant period of abstinence from alcohol is also of concern since the Individual returned to drinking alcohol after a seven-month period of abstinence despite the fact that it could jeopardize his ability to obtain an access authorization. Given the Individual's history, I am not convinced that simply reducing his alcohol consumption, without undertaking any treatment or counseling to gain insight into his alcohol problem or establishing a significant period of abstinence from alcohol, is sufficient to mitigate the security concerns in this case. Therefore, I agree with the Psychiatrist that the Individual has not brought forth evidence sufficient to demonstrate adequate evidence of rehabilitation or reformation.

As the foregoing indicates, the security concerns set forth in the Notification Letter under Criterion J regarding the Individual's alcohol use have not been adequately mitigated. Accordingly, I believe that it would not be appropriate to grant the Individual an access authorization at this time.

## **V. CONCLUSION**

Upon consideration of the record in this case, I find that there was evidence that raised security concerns regarding the Individual's eligibility for an access authorization under Criterion J. I also find insufficient evidence in the record to fully resolve those concerns. Therefore, I cannot conclude that granting the Individual an access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's request for an access authorization should not be granted at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: December 14, 2007